IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO. 832 OF 1983

Ramaco Enterprises,
a firm carrying on business at
315/G, New Charni Road,
Bombay 400 007. ... Plaintiff

Versus

1. A.K. Movies, a partnership
firm carrying on business at 1-E,
Naaz Building, Lamington Road,
Bombay 400 004.

2. Nadiadwala Films and Finance,
a firm carrying on business at
1-E, Naaz Building, Lamington
Road, Bombay 400 004.

3. Associated Film Industries
Pvt. Ltd. a Company within the
meaning of Companies Act, 1956
carrying on business under the
trade name of Film centre, at 68,
Tardeo Road, Bombay 400 034. ... Defendants

Mr. Tushar Bhavsar i/by Ranjit & Co. for Plaintiff.

None for Defendant.

CORAM : F.I. REBELLO,J.
DATED : 2ND SEPTEMBER, 2005

ORAL JUDGMENT :

. The Plaintiff has filed the suit against defendant based on the agreement dated 29.3.1979. The defendants were and are the producers of motion picture titled "Gul-E-Bakavali" in Eastman colour in Hindi version starring Feroz Khan, Sulakshana Pandit, Amjad Khan and others. Various representations were made by the defendants to the Plaintiff. Based on these representations, Plaintiff agreed to join defendant as co-venturers for the said picture and contribute the said amount of Rs.2,50,000/- and to assist the 1st Defendants in completion thereof and in consideration thereof,

offered to pay a lump sum of Rs.20,000/-. As Defendants failed to honour the term of the agreement, the present suit. The reliefs sought are recovery of sum of Rs.2,70,000/- with 18% p.a. interest. Further declaration that the picture negatives, rush and positive prints and all other paraphernalia relating to the said picture "Gul-E-Bakavali" are the property of the Joint Venture between the Plaintiffs and the 1st Defendant. Further declaration is sought that the repayment of the amounts mentioned in Prayer (a) above, is validly secured by a charge upon the distribution, exhibition and exploitation rights of the said picture "Gul-E-Bakavali" for the territory of Bombay Circuit as known in the film trade and upon the publicity materials and positive prints of the said picture and upon all income and realisation thereof from the territory of Bombay Circuit as known in the film trade including the income receivable from the 4th Defendants against the delivery of the prints of the said picture "Gul-E-Bakavali" to the 4th Defendants for the said territory. It appears that no issues were framed.

From the pleadings, following issues will arise :

2(a). Whether the Plaintiffs are entitled for the decree in the sum of Rs.2,70,000/- with interest at

the rate of 18% p.a. from the date of the suit till payment and or costs?

(b) Do the Plaintiffs prove that the pictures negatives, rush and positive prints and all other paraphernalia relating to the said picture "Gul-E-Bakavali" are the property of the Joint Venture between the Plaintiff and 1st defendant?

(c) Whether the Plaintiffs prove that the repayment of the amounts mentioned i Prayer (a) is validly secured by a charge upon the distribution, exhibition and exploitation rights of the said picture "Gul E Bakkavali" for the territory of Bombay Circuit as known in the firm trade and upon the publicity materials and positive prints of the said picture and upon all income and realisation thereof from the territory of Bombay Circuit as known in the film trade including the income receivable from the 4th Defendants against the delivery of the prints of the said picture "Gul-E-Bakkavali" to the 4th Defendants for the said territory.

3. On behalf of the Plaintiff, Mr. Ramesh Nichani, Partner has tendered his affidavit by way of examination in chief. He has stepped into the

witness box and also produced agreement which has been marked Exh.P1 and also letter dated 21.11.1979 which is allowed to be produced as secondary evidence. The agreement does not provide for any interest.

4. From the agreement, Plaintiffs have proved that they have paid to the defendant sum of Rs.2,50,000/- and that in terms of Clause 15 defendant had to pay to the Plaintiff sum of Rs.2,50,000/- along with sum of Rs,20,000/- as provided within seven days from the delivery of the prints of the said picture and if by any reason the said picture is delayed and/or is not released in Bombay circuit by September, 1979 then in that event the producers will return to the said firm the said sum of Rs.2,50,000 along with fixed profit of Rs.20,000/- on or before 30th September, 1979. Clause 16 provides that in the event defendants committed breach Plaintiffs were entitled to dispose of and or sell the distribution, exhibition and exploitation rights of the said picture by themselves or through their servants, agents or any persons in the said Bombay Territory. It was also provided that if the agreement with M/s. Friends Movies, Bombay is subsisting, then in that event the said firm shall be at liberty to take out

prints of the said picture for Bombay Circuit and deliver prints of the said picture for Bombay circuit and deliver the same to M/s. Friends Movies, Bombay and to receive from them the amount to the extent of Rs.2,70,000/- and if the said agreement is not valid and subsisting on the relevant date then to sell the distribution exhibition and/or exploitation rights of the said picture for Bombay territory either by auction or private treaty on such exhibit and/or exploit the said picture and for the said purpose the said firm shall have full power and authority to do all acts, deeds and this as effectively as the procedures can do in respect of the said picture for Bombay territory for purpose of recovering the said amount of Rs.2,50,000/- and fixed profit of Rs.20,000/- amounting to Rs.2,70,000/- and further costs which may be incurred by the said firm for recovery thereof.

. Considering the above, the Plaintiffs have been able to prove Issues (a) and (b). The learned counsel for the Plaintiff states that the film has not been released though negatives are available.

5. In so far as interest is concerned, there was no provision in the agreement for interest. Letter

dated 21.3.1979 also does not demand any interest. Therefore, at the highest,from the date of filing of the suit considering Section 34 of the Code of Civil Procedure, Plaintiffs will be entitled to interest at the rate of 6% from the date of filing of the suit till decree and at the same rate on the amount of Rs,2,70,000/- from the date of the decree till payment. Issue (c) will have to be answered in the affirmative.

6. In the light of the above, suit decreed in terms of Prayer Clauses (a) with interest on the sum of Rs.2,70,000/- at the rate of 6% instead of 18% from the date of the suit till decree and at the same rate from decree till the realisation of the amount as granted in terms of Prayer Clause (a). Suit also decreed in terms of Prayer Clause (b) as also Prayer Clause (e). Costs to be paid by the defendant.

(F.I. REBELLO,J.)